

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RICHARD MARTIN,

No. C 08-05679 SBA (PR)

Petitioner,

ORDER OF TRANSFER

V.

MIKE KNOWLES, Warden,

Respondent.

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MIKE KNOWLES, Warden,

Respondent.

This is a habeas case which was transferred here from the United States District Court for the Eastern District of California. Petitioner, a state prisoner, originally filed his pro se petition for a writ of habeas corpus in the Eastern District of California on December 1, 2008. He has since paid the full filing fee.

In an Order dated December 11, 2008, Magistrate Judge Kimberly J. Mueller of the United States District Court for the Eastern District of California issued an Order transferring Petitioner's action to this Court. The December 11, 2008 Order states: "The application attacks a sentence imposed in the Superior Court of San Francisco County." (Dec. 11, 2008 Order at 1.)

On June 23, 2009, Petitioner wrote a letter to this Court claiming that this action "belongs in the Eastern District Court" because Petitioner "was arrested and convicted in Sacramento County." (June 23, 2009 Letter at 1.)

Federal statute allows "the Supreme Court, any justice thereof, the district courts and any circuit judge" to grant writs of habeas corpus "within their respective jurisdictions." 28 U.S.C. § 2241(a). A federal petition for a writ of habeas corpus made by a person in custody under the judgment and sentence of a state court is properly filed in either the district of confinement or the district of conviction. Id. § 2241(d). Where a case is filed in the wrong venue -- or where the transfer may have been erroneous because a case was transferred to the wrong venue -- the district court has the discretion to transfer it to the proper federal court "in the interest of justice." See 28 U.S.C. § 1406(a).

1 Here, a review of the record shows that Petitioner challenges a conviction and sentence
2 incurred in the Sacramento County Superior Court, which is in the venue of the Eastern District of
3 California. See 28 U.S.C. § 84. Accordingly, that is the proper venue for this action. Thus, the
4 transfer of this action pursuant to the December 11, 2008 Order was in error because venue is not
5 proper in this district.

6 Pursuant to 28 U.S.C. § 1406(a) and Habeas L.R. 2254-3(b), and in the interest of justice, the
7 Clerk of the Court is ordered to TRANSFER this action forthwith to the United States District Court
8 for the Eastern District of California.

9 All remaining motions are TERMINATED on this Court's docket as no longer pending in
10 this district.

11 IT IS SO ORDERED.

12 DATED: 7/6/09

Saundra B. Armstrong
SAUNDRA BROWN ARMSTRONG
UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

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5
6 MARTIN et al,
7 Plaintiff,
8 v.
9 KNOWLES et al,
10 Defendant.

Case Number: CV08-05679 SBA

CERTIFICATE OF SERVICE

11
12 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
Northern District of California.

13 That on July 13, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies)
14 in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in
15 the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's
office.

16
17 Richard Martin E-12035
18 California Medical Facility
19 P.O. Box 2500
Vacaville, CA 95696-2500

20 Dated: July 13, 2009

21 Richard W. Wiking, Clerk
By: LISA R CLARK, Deputy Clerk

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